# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

	A
JEFFREY HEITZENRATER, GERONIMO	:
PADILLA, TIMOTHY HAWK, VALLIE	:
MASIAS, JASON ROBINSON, and	:
MARK GENOVESI, Individually and On	:
Behalf of All Others Similarly Situated,	:
Plaintiffs,	: Civil Action No. 1:12-cv-00900-WMS
-against-	· :
OFFICEMAX, INCORPORATED and	· :
OFFICEMAX NORTH AMERICA, INC.,	:
	:
Defendants.	:
	X

# PLAINTIFFS' NOTICE OF MOTION TO COMPEL DEFENDANTS' CORPORATE REPRESENTATIVE TO TESTIFY REGARDING FACTS UNDERLYING DEFENDANTS' AFFIRMATIVE DEFENSES OF GOOD FAITH AND LACK OF WILLFULNESS

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Susan H. Stern, the Exhibits thereto, and the accompanying Memorandum of Law in support, Plaintiffs will move this Court, at a date and time to be determined by the Court, for an Order compelling the corporate representative designated by Defendants, OfficeMax Incorporated and OfficeMax North America, Inc., to testify regarding the facts underlying the asserted affirmative defenses of good faith and lack of willfulness, pursuant to Federal Rule of Civil Procedure 37(a). Plaintiffs also move for such other, further and different relief as this Court may deem just and proper. In accordance with Local Rule 7(a), Plaintiffs intend to file a reply in further support of the instant

<sup>&</sup>lt;sup>1</sup> Plaintiffs are Jeffrey Heitzenrater, Geronimo Padilla, Timothy Hawk, Vallie Masias and Mark Genovesi (collectively "Plaintiffs"). Plaintiffs' counsel has moved to withdraw from representing Plaintiff Jason Robinson (Dkt. No. 136) and the instant motion has not been brought on Mr. Robinson's behalf.

Motion.

Dated: March 13<sup>th</sup>, 2015 Boca Raton, Florida

Respectfully submitted,

By: /s/ SUSAN H. STERN

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#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of Court using CM/ECF on <u>March 13</u>, <u>2015</u>. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing.

## /s/ Susan H. Stern

Susan H. Stern

### **SERVICE LIST**

Jeffrey Heitzenrater v. Officemax, Inc., et al CASE NO.: 1:12-cv-00900-WMS United States District Court, Western District of New York

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